1942.

File No. O. Wts & Measures/42

Legal DEPARTMENT

"A" BRANCH

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Subject:—

S.R.C. 4/6

Opinions under The Bombay Weights and Measures Act; 1932

File No. O. Wts & Measures/42

Std. Sectt. Slip 24 B e.

518-A

CONTENTS.

Legal Department file No. O. Weights and Measures/42.

S. No.	Comp. No.	Subject.	Pages.
		Opinions under the Bombay Weights and Measures Act, 1932.	
1)	O. No. 8951/4/11/42	Sec. 27(2) Sec. 218 of the B. M. S. Act, 1925. Re: Supervision charges claimed by local bodies for supervising the work of their Weights and Measures staff.	1- 2.

Madhav Raokadam.
7/5
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3/5

Office of the R.L.A.

By Government Resolution (General Department) No. 933/33 dated the 4th March 1942 Government directed that the supervision charges claimed by local bodies for supervising the work of their Weights and Measures Staff should not however be paid to them as the normal staff maintained by these bodies did the work of supervision in addition to their duties and no supervision charges were therefore actually incurred. The Bombay and Poona Municipalities are still claiming the supervision charges and have refused to credit the balance of fees to Government under section 27(2) of the Bombay Weights and Measures Act, 1932 without deducting the supervision charges therefrom. The Bombay Municipality contends that such charges have actually been levied in the past on works done by it on behalf of Government while the Poona Municipality maintains that its claim for supervision charges is just and equitable since it helped Government in the administration of the Act.

2. The questions raised for the consideration of the R.L.A. are:-

1). whether the Bombay and Poona Municipalities are entitled to the supervision charges; if not,

2) what steps should be taken to recover the balance of fees from them.

3. Question No. (1) :- Sub-section (2) of section 27 of the Bombay Weights and Measures Act, 1932, inter alia provides that there shall be credited annually to Government the balance of fees levied by the Municipalities and district local boards under this section after deducting:-

a) the expenses incurred by the said municipalities or local boards as the case may be in providing and maintaining secondary standards etc. and

b) all necessary recurring ~~xxx~~ expenditureof the said municipalities or local boards as the case may be under this Act.

The words "under this Act" clearly indicate that the expenditure must have been incurred for purposes of the Act before a municipality or a local board, as the case may be, can be allowed to deduct it from the fees collected by it. Supervision for the proper administraxtion of the Act might be necessary but unless a Special staff is entertained or an additional payment is made to the already existing staff for such supervision no expenditure can be deemed to have been incurred within the meaning of clause (b) of section 27(2). It may be that supervision charges are usually claimed by the municipality in respect of works carried out by it on behalf of Government and they might have been paid in the past even in the absence of any special agreement; but such practice, if any , cannot help the municipality to claim supervision charges in cases, where, as in the present case, the performance of duty is statutorily imposed on it. However, equitable the claim of these two municipalites may be, it would not in law be tenable. Consequently no supervision can be legally claimed by the Bombay and Poona Municipalities.

4. Question No.(2) :- No doubt, failure to pay the balance of fees under section 27(2) of the Bombay Weights and Measures Act would be a default in performance of a duty within the meaning of section 218 of the Bombay Municipal Boroughs Act, 1925. But it does not appear that the Poona Municipality has refused to pay, since it claims to deduct the supervision charges from the fees collected by it. It is therefore doubtful whether the Poona Municipality can be said to have defaulted within the meaning of section 218. The words " or by or under any enactment for the time being in force" do not find place in section 518 of the City of Bombay Municipal Act, 1888, which is a provision parallel to section 218 of the Bombay Municipal Boroughs Act. Consequently

Consequently the only course open to Government to enforece the claim against the Bombay Municipality is to file ~~a~~ suit. Similar action may be taken against the Poona Municipality also.

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Remembrancer of Legal Affairs.

U. R. to G.D. No.8951 dated the 4th November, 1942.

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